IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1114 OF 2007
IN
CRIMINAL APPEAL NO. 944 OF 2007.

1. Shaikh Saiful Ali Shaikh Mujjafar Hussain
2. Nasir Firoj Ali..... ....Applicants.
V/s
The State of Maharashtra ....Respondent.

Mr.S.G.Rajput, Adv. For the applicants.

Mr.Y.M.Nakhwa, APP for the State.

CORAM: A.P.DESHPANDE, J.
19/11/07

PC:

The learned counsel for the applicants seeks permission to withdraw the bail application to the extent it relates to applicant-accused No.1-Shaikh Saiful Ali Shaikh Mujjafar Hussain. Permission granted. Application of applicant No.1 is thus dismissed as not pressed.

2. Heard learned counsel for applicant-accused No.2 and the learned Public Prosecutor for the State. The present applicant Nos. 1 and 2 were accused Nos. 1 and 2 in Sessions Case No.923/06. The applicants were prosecuted for commission of an offence under section 302 read with section 34 of Indian Penal Code. The Sessions Court has convicted both the applicants for the commission of offence under section 304 Part II read with section

34 of Indian Penal Code.

3. The case of the prosecution is that the present applicants/accused and the deceased victim Parmeshwar had an altercation and quarrel over seat in a local train which they boarded at Kurla at which point of time the accused threatened the deceased that they will teach him a lesson when they get down at the railway station Sanpada. At Sanpada, according to the prosecution, the applicants-accused pulled the victim out of the compartment and assaulted him with fist blows. Public at the platform intervened and caught hold of both the applicants. As the train was about to start the victim ran for catching the same and in the process some of his articles fell on the platform. He fumbled for a while to take up those articles and while he was attempting to catch the running train the applicant No.1 freed himself from the grip of the persons holding him and hit and pushed the victim at the running train. Thus the victim fell in between two compartments and sustained head injuries resulting in his death during the medical treatment in hospital. It is relevant to note that when both the accused were caught by the mob at the platform one of them i.e. Accused No.1 freed himself and hit and pushed the victim towards running train. Prima facie at this stage it is difficult to attribute common intention and knowledge for commission of offence under section 304 part II to applicant No.2. Case of the applicant Nos.1 and 2 stands on different footing. The conviction of accused No.2 is solely on the basis of section 34 of Indian Penal Code. In this view of the matter I am inclined to release the

applicant No.2-Nasir Firoj Ali on bail. Both the applicants were released on bail during the trial and they have not misused the liberty. Hence I direct that the applicant No.2-Nasir Firoj Ali be released on bail on the same terms and conditions as were imposed while granting bail in the Sessions Court on executing fresh bond. Application thus stands disposed of.

19.11.07